

DAE *IPW*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of

MATTHEW R. HYRE ET AL

: Art Unit: 1731

Serial No: 10/005,567

: Examiner: Carlos N. Lopez

Filed: December 5, 2001

: Docket No: 5352-05

For: GLASS CONTAINER FORMING
MACHINE

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE
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ALEXANDRIA, VA 22313-1450 ON January 5, 2005

Jean L. Stanfords

Commissioner of Patents
Mail Stop Petition
P.O.Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)


Please charge Deposit Account No. 50-0696 for any required fee.

Applicant received the attached Office communication dated December 16, 2004, in the above identified application holding that the above application was abandoned in view of the filing of an amendment which was not "a proper reply, or a bona fide attempt at a proper reply". Also attached is the referred to response dated August 28, 2004 which was responding to the to the office action dated April 21, 2004, also enclosed.

Applicant is unable to appreciate how this response can be viewed as not being "a bona fide attempt at a proper reply". It should be pointed out that the 112 matter could be handled with the

deletion of a "the" by examiner's amendment and that applicant can find no reference to "objections to the specification and drawings" referred to in the notice of abandonment.

Respectfully submitted,

By 
Spencer T. Smith
Attorney for Applicants
Reg. No. 25,926

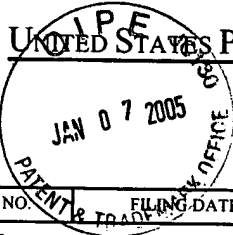
January 5, 2005

Emhart Glass Research, Inc.
89 Phoenix Avenue
P.O. Box 1229
Enfield, Connecticut 06083-1229

860-814-4052
860-814-4173 (fax)



UNITED STATES PATENT AND TRADEMARK OFFICE



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,567	12/05/2001	Matthew R. Hyre	5352-05	7992

7590 12/16/2004
Emhart Glass Manufacturing Inc.
89 Phoenix Avenue
P.O. Box 1229
Enfield, CT 06082

EXAMINER

LOPEZ, CARLOS N

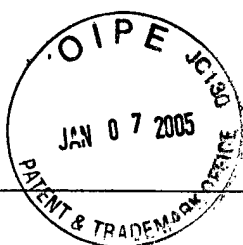
ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 12/16/2004

NS'D

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment

Application No.

10/005,567

Examiner

Carlos Lopez

Applicant(s)

HYRE ET AL.

Art Unit


1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

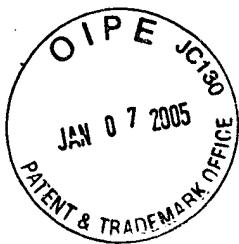
This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 21 April 2004.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ A reply was received on 28 August 2004 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

The reply filed on 8/28/04 fails to address the 35 USC 103 (a) rejection under Rodriguez-Wong reference, the 35 USC 112 2nd paragraph rejection of claim 3 and the objections to the specification and drawings.


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



ASSISTANT COMMISSIONER OF PATENTS OR TRADEMARKS

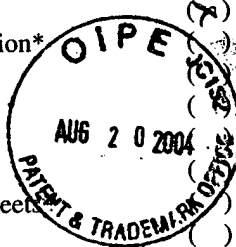
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19

Kindly acknowledge receipt of the items marked (x). Please date stamp and return.

Applicant HYRE Serial No. 5352-05

Amendment	()	Info. Disclosure Statement	()
Abandon/Application*	()	Issue Fee Transmittal	()
Assignment	()	Missing Parts	()
Cert. Priority Doc.	()	Extension of Time	()
Statement of Use	()	Transmittal Letter in trip/dup.	()
Specimens (3)	()	Check for \$	()
Drawings _____ Sheet	()	Other: <u>TERMINAL DISCARD</u>	(x)
Appeal/Brief	()		()



* Specification has _____ pages, including _____ claims, and un/signed Declaration.

Attorney _____ Docket No. _____

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TERMINAL DISCLAIMER TO OBLIATE A PROVISIONAL DOUBLE
PATENTING REJECTION OVER A PENDING SECOND APPLICATION**

Docket Number (Optional)

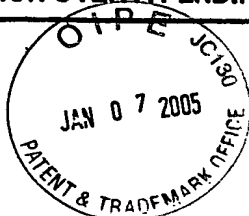
5352-05

In re Application of:

Application No.:

Filed:

For:



The owner*, EM HART GUSS SA, of 100% percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending second application Application Number 10/006603, filed on 12/5/01, the term being defined in 35 U.S.C. 154 to 156 and 173, as shortened by any terminal disclaimer filed prior to the grant of any patent on the pending second application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the second application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney of record.

Signature

8/18/04
Date

SPENCER T. SMITH

Typed or printed name

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is in full

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

(Terminal Disclaimer to Obligate a Provisional Double Patenting Rejection over a Pending Second Application
(PTO/SB/25) [9-4.1]-page 1 of 1)

JAN 07 2005

PTO/SB/25 (05-03)

Approved for use through 4/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING REJECTION OVER A PENDING SECOND APPLICATION

Docket Number (Optional)

5352-05

In re Application of: **MATTHEW R. HYRE ET AL**
 Application No.: **10/005,567**
 Filed: **December 5, 2001**
 For: **GLASS CONTAINER FORMING MACHINE**

The owner*, Emhart Glass SA, of 100% percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173 as shortened by any terminal disclaimer filed prior to the grant of any patent granted on pending second Application Number 10/006,603, filed on 12/5/01, of any patent on the pending second application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the second application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.


In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.


 Signature Date Aug 23, 2004

Spencer T. Smith

Typed or printed name

(860) 814-4052

Telephone Number

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
 Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9189 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Matthew R. Hyre

: Art Unit: 1731

Serial No: 10/005,682

: Examiner: Carlos N. Lopez

Filed: December 5, 2001

: Docket No: 5352-05

For: Glass Container Forming Machine

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:
ASSISTANT COMMISSIONER FOR PATENTS, P.O. BOX 1450
ALEXANDRIA, VA 22313-1450 ON

AUGUST 18 2004
[Signature]

Sir:

AMENDMENT

Please charge deposit account no. 50-0696 for the fee required to extend the time for reply by 30 days until August 21, 2004, and the Terminal Disclaimer fee.

Responsive to the Office Action dated April 21, 2004, Applicant would like to make the following

CLAIM AMENDMENTS

1(original). A blow head mechanism for blowing a parison in a blow mold of an I.S. machine and cooling the blown parison so that a bottle will be formed which can be removed from the blow mold comprising

a blow head assembly,

support means for supporting said blow head assembly,

first displacement means for displacing said support means to displace said blow head assembly between a remote "off" position and an advanced "on" position,

said blow head assembly including a blow tube selectively displaceable between an up position and a down position,

second displacement means for displacing said blow tube from the up position to the down position and then back up to the up position a plurality of times during the time that the blow head assembly is at the "on" position,

said second displacement means including a profiled actuator.

2(original). A blow head mechanism according to claim 1, wherein said profiled actuator is a servomotor.

3(currently amended). A blow head mechanism according to claim 1, wherein the profile of the profiled actuator displaces the cooling tube in coordination with the cooling requirements of blown parison/formed bottle.

4(original). A blow head mechanism according to claim 1, wherein the blown parison has an upper neck portion and a lower body portion, said profiled actuator including a displacement profile which will displace the blow tube from the up position to the location where the upper neck portion meets the lower body portion at an average velocity higher than the average velocity at which the blow tube will be displaced from the location where the upper neck portion meets the lower body portion to the bottom of the blown parison.

5(original). A blow head mechanism according to claim 4, wherein said displacement profile will cause said blow tube to dwell at the bottom of the blown parison for a selected period of time.

6(currently amended). A blow head mechanism according to claim 5 wherein the displacement profile will displace the blow tube from the down position to the location where the upper neck portion meets the lower body portion at said average lower velocity and will displace the blow tube from the location where the upper neck

portion meets the lower body portion to the up position at said higher average velocity.

Remarks

The claims have been corrected by deleting "the" in claim three and by changing "blow head" to - - blow tube - - in claim 6.

A Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection is enclosed.

The present invention relates to the formation of glass bottles in an I.S. machine. A glass parison is formed in a blank mold and then transferred into a blow mold where it is blown into a bottle. According to claim 1, the blow tube is oscillated a plurality of times while the blow head is in position:


second displacement means for displacing said blow tube from the up position to the down position and then back up to the up position a plurality of times during the time that the blow head assembly is at the "on" position,

Figure 12 discloses the control (structure) which achieves this function.

A patent element defines 1. Structure, for 2. Performing a function , in 3. A particular way. Patentability is not established by comparing structure only. It is established by comparing all three components of a claim element. None of the references teach reciprocating the cooling tube a plurality of times during the time when the blow head is on which is a function never before performed. There is new structure, ie. There is a computer programmed to define this multiple reciprocation, There also is a new function, i.e., to cool the interior wall of the bottle in an up down, down up, up down, down up program. The element claimed above is accordingly patentable over the cited references.

Accordingly claim 1 and dependent claims 2-6 should be presently allowed.

Respectfully submitted,

By 

Spencer T. Smith
Attorney for Applicants.
Reg. No. 25,926

August 18, 2004
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